

Attorney Docket: 030563
U.S. Application No. 10/740,744 Art Unit 2179
Response to August 28, 2007 Final Office Action

REMARKS

The Assignee respectfully requests reconsideration in response to the final office action mailed August 28, 2007. The Assignee respectfully submits that the proposed combination of *Fado*, *Brockway*, and/or *Matthew* "teaches away" and cannot support a *prima facie* case for obviousness.

Claims 1-23 are pending in this application.

Objection to Claim 4

The Office objected to claim 4 for a grammatical mistake. The word "Bvideo" has been replaced with "video." Examiner Tran is thanked for noting this mistake.

Rejection under § 101

The Office rejected claim 11-16 under 35 U.S.C. § 101 for claiming non-statutory subject matter. Independent claim 11 has been amended to recite a "computer readable media having stored thereon a software wizard program." Dependent claims 12-16 have been similar amended. Examiner Tran is again thanked for this suggestion.

Fado "Teaches Away"

Any proposed combination involving *Fado* "teaches away" from the pending claims. "A reference that 'teaches away' from the claimed invention is a significant factor" when determining obviousness. See M.P.E.P. at § 2145 (X)(D)(1). A reference must be considered as a whole, including portions that lead away from the claimed invention. See *id.* at § 2141.02; see also *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 220 U.S.P.Q. (BNA) 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). "It is improper to combine references where the references teach away from their combination." M.P.E.P. at § 2145 (X)(D)(2). If the proposed combination

Attorney Docket: 030563
U.S. Application No. 10/740,744 Art Unit 2179
Response to August 28, 2007 Final Office Action

changes the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to support a *prima facie* case. See M.P.E.P. at § 2143.01.

The *prima facie* cases all require impermissible changes to *Fado*'s principle of operation. *Fado* only polls a device port that has been manually selected by a user. *Fado* does not poll "*all*" input ports, as all the independent claims recite. Because *Fado* only polls the device port that has been manually selected by the user, *Fado*'s principle of operation must be impermissibly changed to support the *prima facie* cases.

Fado provides an explanation. *Fado* explains a microphone test procedure. See U.S. Patent 6,266,571 to Fado, *et al.* at column 9, lines 54-56 and at column 10, lines 57-60. The "user is instructed to remain silent" and a room noise level is recorded. *Id.* at column 11, lines 5-11. "The user is instructed to recite a phrase into the microphone." *Id.* at column 11, lines 14-15. *Fado*'s tool compares signal and noise levels. *Id.* at column 11, lines 24-32. "If the microphone test is not successful," the user is reminded of the proper connection. See U.S. Patent 6,266,571 to Fado, *et al.* at column 11, lines 35-40 (emphasis added). A GUI displays a picture "depending upon the user's prior selection of an output audio device." *Id.* at column 11, lines 40-41 (emphasis added). If a retest is unsuccessful, a power adapter and/or battery adapter for the microphone may be tested. See *id.* at column 11, line 50 through column 12, line 23. A GUI displays pictures "correspond[ing] to audio output device selected by the user." *Id.* at column 12, lines 23-31 (emphasis added). *Fado* continues to explain that when the tool cannot adjust the microphone's audio level, the user may readjust sound card parameters. See U.S. Patent 6,266,571 to Fado, *et al.* at column 13, lines 52-57. FIG. 47 illustrates that when the microphone test is unsuccessful, a GUI instructs the user to re-check that the microphone is connected to the "correct jack." See U.S. Patent 6,266,571 to Fado, *et al.* at FIG. 47 (emphasis added). See also *id.* at column 14, lines 65-67.

Fado, then, "teaches away" from the pending claims. All the independent claims recite features for polling "*all*" input ports. Because *Fado* only polls a device port that has been manually selected by a user, *Fado*'s principle of operation must be impermissibly changed to

Attorney Docket: 030563
U.S. Application No. 10/740,744 Art Unit 2179
Response to August 28, 2007 Final Office Action

support the *prima facie* cases. Because the patent laws forbid changing a principle of operation to support a *prima facie* case, *Fado* cannot support a *prima facie* case for obviousness. All the *prima facie* cases for obviousness must fail, so the Office is respectfully requested to remove the § 103 final rejections of the pending claims.

Fado & Brockway "Teach Away"

Any proposed combination involving *Fado* and *Brockway* "teaches away" from their combination. As the above paragraphs explained, *Fado* only polls a device port that has been manually selected by a user. *Brockway*, in contradistinction, describes a client that "periodically polls its physical I/O ports for the existence of a connected peripheral device." U.S. Patent 6,789,111 to Brockway, *et al.* at column 2, lines 50-53. *See also id.* at column 2, line 63 through column 3, line 2. An "automatic detection unit" detects peripheral devices connected to the client. *Id.* at column 4, lines 58-61. "A Plug and Play system is designed to continuously monitor I/O ports." *Id.* at column 5, lines 63-67 (emphasis added). *See also id.* at column 6, lines 1-10. Even if the client does not have "Plug and Play" capability, the client still has a "peripheral detection unit" that queries the I/O/ ports "one at a time" to identify peripheral devices. *Id.* at column 7, lines 12-30 (emphasis added).

Fado and *Brockway*, then, "teach away" from their combination. *Fado* only polls a device port that has been manually selected by a user, while *Brockway*, in contradistinction, continuously/automatically polls the I/O ports for the existence of a peripheral device. Because *Fado* and *Brockway* "teach away" from their combination, any proposed combination of *Fado* and *Brockway* cannot support a *prima facie* case for obviousness. All the *prima facie* cases for obviousness must fail, so the Office is respectfully requested to remove the § 103 final rejections of the pending claims.

Attorney Docket: 030563
U.S. Application No. 10/740,744 Art Unit 2179
Response to August 28, 2007 Final Office Action

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,



Scott P. Zimmerman
Attorney for the Assignee
Reg. No. 41,390

page 11